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Appl. No. 09/909,288
Atty. Docket No. CM2506
Amdt. dated February 20, 2007
Reply to Office Action of August 18, 2006
Customer No. 27752

REMARKS/ARGUMENTS

Claims 57, 58 and 63 are now under consideration. Method Claims 30-35 were previously withdrawn from consideration.

Claim 57 has been amended to more specifically characterize the synthetic smectite clay as supported by page 14, lines 17-29.

It is submitted that all amendments are fully supported and entry is requested.

Applicants thank the Examiner for the withdrawal for the rejection of Claims 57, 58, 60 and 62-65 under 35 U.S.C. §112, first paragraph.

Rejection Under 35 USC §112, first paragraph

Claims 57, 58 and 63 are rejected under 35 U.S.C. §112, first paragraph for the use of the term "laponite".

Rejections Under 35 USC §103

Claims 57 and 58 are rejected under §103(a) over JP 60-141800 in view of US 5,202,050 (Culshaw et al.), JP 8151597, US 5,821,214 (Weibel et al.) and US 6,194,362 (Trihn et al.), and further in view of WO 99/24539.

The Office Action further notes that JP 60 does not specifically teach a synthetic lapointe clay having a particle size of less than 100 nm, xanthan gum and an odor masking perfume comprising an ionone, specific physical parameters for the composition and other requisite components of the claimed composition.

The Office Action further notes that all the the references combined teach the use of propylene glycol butyl ether in addition to the other requisite components of the composition as recited by Claim 63.

The Office Action then states that synthetic laponite clay in the composition of JP 60 would have been obvious in view of Weibel et al. for improved stability in a "similar cleaning composition".

The Office Action then states that synthetic laponite clay having a particle size of less than 100 nm in the composition of JP 60 would have been obvious in view of JP '597 and

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Weibel et al. as the compositions are "similar", apparently, among the three references. The Office Action further states the JP '597 is a secondary reference drawn to a cleaning composition and relied upon for its teaching of particle size and not the equivalence of clays to gums or for gum thickeners in general.

The Office Action then states that xanthan gum in the composition of JP 60 would have been obvious as Culshaw et al. teaches the equivalence of smectite clays to xanthan gum in a "similar cleaning composition" and as JP 60 teaches the use of thickening agents such as swellable clay minerals including smectite-type clay minerals. The Office Action further states that Culshaw et al. is a secondary reference which teaches the equivalence of clay thickeners to gum thickeners in a similar composition as JP 60. The Office Action further assert that one of skill in the art would have "clearly" been motivated to use xanthan gum in JP 60 citing MPEP 2144.06 (In re Kerkoven).

The Office Action then states that a perfume comprising an ionone in the composition of JP 60 would have been obvious as Trihn et al. teaches a "similar hard surface cleaning composition" containing a perfume comprising an ionone. Also stating that JP 60 teaches the use of perfume. The Office Action further states that Trihn et al. is a secondary reference for its teaching of perfumes comprising ionones.

The Office Action further states that the following elements of the claimed invention would have been obvious in view of the "broad teachings of [JP 60] in combination with Culshaw et al. Trihn et al. and JP '597* * * as [they] suggest the same components in the same proportions* * *":

1. Flow viscosity
2. shear thinning properties
3. pH
4. other properties

The Office Action further states that the use of propylene glycol butyl ether in JP 60 would have be obvious because WO '539 teaches the equivalence of propylene glycol butyl ether to diethylene glycol monobutyl ether in a "similar cleaning composition" and that JP 60 teaches the use of diethylene glycol monobutyl ether.

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Applicants strongly object to the flawed logic presented above. MPEP §2144.06 does relate to combining equivalents known for the same purpose. However, as clearly stated “in order to rely on equivalence as a rationale supporting an obviousness rejection the equivalency must be recognized in the art, and cannot be based on applicant’s disclosure or the mere fact that the components at issue are functional or mechanical equivalents. In re Ruff, 256 F.2d 590, 118 USPQ 340 (CCPA 1958).

When discussing what the meaning of “recognized in the art” means, one can look to decisions such as In re Karl Hermann Hacklander, 328 F.2d 937, 140 U.S.P.Q. 588 (1964), where the court indicated that the prior art as issue, “discloses that polyurethane may be an effective substitute for rubber in many applications.” See also US 2,625,535, Col. 2, lines 27-41. Also In re Dillion, 919 F.2d 688, 16 U.S.P.Q.2D 1897 (1990) also touched on this subject stating, “there is a sufficiently close relationship between the tri-orthoesters and tetra-orthoesters (see [US 3,903,006 and US 2,840,613]) in the fuel oil art to create an expectation that the hydrocarbon fuel composition containing the tetra-esters would have similar properties, including water scavenging, to make like compositions containing the tri-esters, and to provide the motivation to make such new compositions. [US 2,840,613] teaches use of both tri- and tetra-orthoesters in a similar type of chemical reaction. [US 3,903,006] teaches their equivalence for a particular practical use.

Applicants submit that the court in either of these decisions intended for an expectation of equivalence to merely be created by a recitation in a Markush group. More discussion or “teaching” in the reference must be present for the equivalency rationale to hold water.

Drawing attention back to Applicants’ claim 57 in light of this discussion and another summary of the logic presented by the Office Action:

Claim 57	Office Action Statements
A hard surface cleaning product comprising	JP 60; Culshaw et al.; JP ‘597; Weibel et al.; Trihn et al. and WO ‘539
a hard surface cleaning composition and a spray dispenser,	JP 60
wherein spray droplets from the spray	would have been obvious

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dispenser have an average equivalent geometric diameter from about 3 μ m to about 10 μ m, as measured using a TSI Aerosizer;	
wherein the cleaning composition comprises an anionic surfactant,	JP 60; Culshaw et al.; JP '597; and Trihn et al.
an organic solvent system,	JP 60; Culshaw et al.; Trihn et al. and WO '539
a thickening system comprising a xanthan gum	Culshaw et al.
and a synthetic laponite clay thickening agent having an average platelet size of maximum dimension less than about 100 nm,	JP '597; and Weibel et al.
wherein the organic solvent system comprises at least one organoamine and a glycol ether solvent,	JP 60; Culshaw et al.; Trihn et al. and WO '539
wherein the glycol ether solvent is selected from the group consisting of ethylene glycol monobutyl ether, diethylene glycol monobutyl ether, ethylene glycol monomethyl ether, ethylene glycol monoethyl ether, diethylene glycol monomethyl ether, diethylene glycol monoethyl ether, propylene glycol monobutyl ether, dipropylene glycol monobutyl ether, ethylene glycol phenyl ether, and mixtures thereof;	JP 60; Trihn et al. and WO '539
a solvent odor masking perfume comprising an ionone:	Trihn et al.

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wherein the composition has a pH, as measured in a 10% solution in distilled water, from about 11.5 to about 14; s.	would have been obvious
and wherein said composition has shear thinning properties.	would have been obvious

While various and sundry of the individual ingredients herein may be disclosed in the cited combination of documents, it is submitted that their combination in the manner suggested in the rejections is a matter of impermissible hindsight. Moreover, even if combined, the pH, organamine/solvent plus perfume, spray droplet size system herein is not fairly suggested, in the sense of §103.

The broad and sweeping assertion that all of the six cited references disclose "similar" compositions such that one of skill in the art "clearly" would be motivated to is quite simply unbelievable and Applicants believe incorrectly asserted.

JP 60 relates to a liquid detergent composition appropriate for organic materials adhered to household stoves, ovens used in cooking, vents, plywood, glass, refrigerators and other kitchen items, and in particular for tough stains resulting from thermal and oxidative modification of oils. (see page 3 of translation previously provided).

Culshaw et al. discusses that "[t]he benefits of the present compositions are derived from the combination of the specific organic chelating agents and organic solvents described hereinabove. They are particularly noticeable in terms of calcium soap-soil removal from surfaces such as bathtub surfaces." (emphasis added). Col. 5, lines 30-35.

JP 8151597 relates to obtaining a liquid detergent composition, having a favorable viscosity and good liquidity without causing the stringiness, etc., in taking out thereof from a container in use by blending a clay mineral having specific properties therein.

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Weibel et al. relates to hard surface scouring cleansers containing hypochlorite bleach which are thickened with a polyacrylate resin or a combination of a synthetic smectite clay and a polyacrylate resin and which contain "soft" organic abrasive particles. More particularly, it relates to such compositions containing particulate abrasives which maintain high active chlorine stability over a long period of time and have good rinsability. (emphasis added)

Trihn et al. relates to a glass cleaning composition delivering blooming perfumes which deliver a high level of consumer recognition immediately upon use. (emphasis added)

WO 99/24539 relates to a method of softening soil deposited on a hard surface especially on tough soils such as burnt milk, caramelized sugars, cooked egg, soils which have hardened with time, etc. This is particularly true in the hand cleaning of tableware and pots and pans. It is not uncommon to have both light soils and heavy or tough soils on a variety of different surfaces, such as fine china plates, copper pots, stainless flatware, wooden spatulas, ceramic mortar and pestles, etc. in hand dish cleaning. (emphasis added)

The Office Action has failed to state why these references are "similar" such that one of skill in the art would combined each and every one of them to arrive at the claimed invention of the present application such that several element not specifically discussed still would have been obvious. Applicants submit that it simply cannot be done. As such, withdrawal of all rejections over this combination of documents is requested.

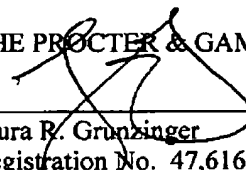
Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference(s). In view of the foregoing, entry of the amendment(s) presented herein, reconsideration of this application, and allowance of the pending claim(s) are respectfully requested.

Respectfully submitted,

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